



Broadcasting Regulatory Policy CRTC 2011-59-1

PDF version

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Standard requirements for video-on-demand undertakings – Provision of an outlet for local expression, measures to control the loudness of commercial messages and annual filing of aggregate statistical data

In order to streamline the ongoing renewal process for a number of video-on-demand services and future applications, the Commission amends the standard requirements for such services by adding standard requirements for the provision and captioning of community programming, measures to control the loudness of commercial messages and the annual filing of aggregate statistical data. The amended requirements are set out in the appendix to this policy.

1. The Commission has approved applications by video-on-demand (VOD) licensees affiliated with broadcasting distribution undertakings (BDUs) to provide an outlet for local expression on the VOD platform, subject to conditions of licence establishing requirements for community programming that essentially parallel those for BDU-operated linear community channels. These licensees include Saskatchewan Telecommunications (Broadcasting Decision 2006-490), MTS Allstream Inc. (Broadcasting Decision 2007-86) and TELUS Communications Inc., and 1219823 Alberta ULC in partnership with TELUS Communications Inc. in TELE-MOBILE Company, partners in a general partnership carrying on business as TELUS Communications Company (Broadcasting Decision 2008-135). The Commission notes that the licences for those VOD services will be renewed shortly and that the licensees have indicated that the current conditions of licence should continue to apply over the new licence term and have commented on the wording of the conditions. The Commission further notes that other VOD undertakings have recently requested amendments to their licence to be allowed to broadcast community programming.
2. Accordingly, in order to streamline the renewal process and future applications, the Commission has amended the standard requirements for VOD undertakings set out in Broadcasting Regulatory Policy 2011-59 by adding standard conditions of licence for the provision of community programming. The Commission notes that BDUs will still require separate conditions of licence if they intend to distribute community programming on a VOD platform. The Commission has also added the standard condition of licence for closed captioning of original licensee-produced community

programming and the expectation for closed captioning of original access programming introduced in Broadcasting Regulatory Policy 2010-622. Further, the Commission has taken this opportunity to amend condition 8 relating to advertising to reflect the updated section numbers in the *Broadcasting Distribution Regulations* and to add a provision relating to measures to control the loudness of commercial messages, consistent with its determinations in the proceeding initiated by Broadcasting Notice of Consultation 2011-803, as amended by Broadcasting Notice of Consultation 2011-803-1.

3. Finally, in Broadcasting Regulatory Policy 2010-190, the Commission stated that it would request aggregate statistical data concerning the following at renewal:
 - current and projected video server capacity;
 - total number of titles on the servers;
 - total number of Canadian titles on the servers;
 - total number of feature films on the servers;
 - total number of Canadian feature films on the servers;
 - breakdown of titles in both official languages;
 - total number of orders of Canadian programs;
 - total number of orders of Canadian feature films; and
 - the amount of revenue remitted to Canadian feature film rights holders.
4. The Commission deems it appropriate to add a standard condition of licence requiring the filing of this information as part of the annual returns to be filed on 30 November following the end of each broadcast year. The Commission considers that the filing of this information is important as it allows the Commission to remain informed of VOD undertaking activities in a rapidly evolving broadcasting environment.
5. Furthermore, in order to allow the Commission to be made aware of the proportion of orders of Canadian and non-Canadian programs and feature films, the Commission considers it appropriate that the following information also be provided:
 - total number of orders of non-Canadian programs; and
 - total number of orders of non-Canadian feature films.
6. The Commission may choose to publish some or all of this information, with the exception of that related to current and projected video server capacity. The revised requirements are set out in the appendix to this policy.

7. The Commission encourages newly licensed undertakings to file applications to amend their licences in order to add the new standard conditions of licence prior to their next licence renewal.

Secretary General

Related documents

- *Call for comments on amendments to various regulations, standard conditions of licence and an exemption order to implement measures to control the loudness of commercial messages*, Broadcasting Notice of Consultation CRTC 2011-803, 22 December 2011, as amended by Broadcasting Notice of Consultation CRTC 2011-803-1, 2 February 2012
- *Standard requirements for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2011-59, 31 January 2011
- *Community television policy*, Broadcasting Regulatory Policy CRTC 2010-622, 26 August 2010, as amended by Broadcasting Regulatory Policy CRTC 2010-622-1, 13 September 2010
- *Regulatory framework for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2010-190, 29 March 2010
- *Licence amendments related to the provision of an outlet for local expression by video-on-demand*, Broadcasting Decision CRTC 2008-135, 30 June 2008
- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2007-86, 16 March 2007
- *Licence amendments related to the funding and provision of an outlet for local expression*, Broadcasting Decision CRTC 2006-490, 8 September 2006

Appendix to Broadcasting Regulatory Policy CRTC 2011-59-1

Standard conditions of licence, expectations and encouragement for video-on-demand undertakings

Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of sections 3(2)(d), 3(2)(e), 3(2)(f), 4 and 6.1.
2. Except as authorized by the Commission, the programming undertaking shall be operated in fact by the licensee itself.
3. The licensee shall ensure that at all times:
 - a) no less than 5% of the English-language feature films in the inventory available to subscribers are Canadian;
 - b) no less than 8% of the French-language feature films in the inventory available to subscribers are Canadian;
 - c) the feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and that meet the approved *Industry Code of Programming Standards and Practices Governing Pay, Pay-Per-View and Video-On-Demand Services*; and
 - d) no less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.
4. The licensee shall ensure that no less than 25% of the titles promoted each month on its barker channel are Canadian titles.
5. The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.

For the purpose of this condition:

- a) if the video-on-demand service is a “related service,” “gross annual revenues” shall be 50% of the total video-on-demand associated revenues received from customers of the broadcasting distribution undertaking distributing the service;
- b) if the video-on-demand service is not a “related service,” “gross annual revenues” shall be the total amount received from the broadcasting distribution undertaking(s) distributing the video-on-demand service; and
- c) a “related service” means one in which the broadcasting distribution undertaking distributing the video-on-demand service or any of its shareholders

owns, directly or indirectly, 10% or more of the equity of the video-on-demand service.

6. (a) The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films. The licensee will be permitted to exclude the amount remitted to Canadian feature film rights holders as revenue for the purpose of calculating the contribution to a production fund required under condition of licence 5.
 - (b) Notwithstanding paragraph (a), some Canadian feature films may be the subject of a negotiated revenue-sharing agreement between the licensee and the rights holder of Canadian feature films. Any revenues retained by the video-on-demand licensee with respect to such Canadian feature films shall be included as gross broadcasting revenues for the purposes of calculating the contribution to a production fund required under condition of licence 5.
7. The licensee is prohibited from offering: (a) a non-Canadian subscription video-on-demand (SVOD) package that is directly competitive with a Canadian linear pay or specialty service or (b) a Canadian SVOD package that is directly competitive with a genre-protected Canadian linear pay or specialty service, unless the package is an on-demand extension of this Canadian linear pay or specialty service.
8. The licensee shall not include as part of its video-on-demand offering any program containing a commercial message except under the following circumstances:
 - (a) the commercial message
 - (i) is inserted by the licensee in a program that is obtained from a Canadian programming undertaking that is not a related Canadian programming undertaking;
 - (ii) is inserted by the licensee in a program that is obtained from a related licensed Canadian programming undertaking that has acquired the right to broadcast the program on its linear Canadian programming service(s);
 - (iii) was already included in a program previously broadcast in Canada by a non-Canadian programming service authorized for distribution in Canada; or
 - (iv) is included in the licensee's community programming in accordance with subsections 30(1)(g), 30(1)(h) and 30(1)(i) of the *Broadcasting Distribution Regulations* (where applicable);
 - (b) if the commercial message is included in a program by virtue of 8(a)(i), 8(a)(ii) or 8(a)(iv), the program's inclusion as part of the video-on-demand offering must be the subject of a written agreement entered into with the programming undertaking that owns the rights to the program;

(c) the commercial message complies with the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission; and

(d) as of 1 September 2012, the commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

For the purpose of this condition of licence, “related Canadian programming undertaking” means a Canadian programming undertaking of which the licensee and/or an affiliate controls more than 10% of the total shares issued and outstanding.

9. The licensee may broadcast a commercial message directly or indirectly advertising an alcoholic beverage only if:
- (a) the sponsor is not prohibited from advertising the alcoholic beverage by the laws of the province in which the commercial message is broadcast;
 - (b) the commercial message is not designed to promote the general consumption of alcoholic beverages; and
 - (c) the commercial message complies with the *Code for Broadcast Advertising of Alcoholic Beverages* published by the Commission on 1 August 1996.

Paragraph (b) does not prohibit industry, public service or brand preference advertising.

10. The licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. In any proceedings before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that has given the preference or subjected the person to the disadvantage.
11. The licensee shall not acquire exclusive rights for any of the programming offered on its programming service.
12. (a) The licensee shall caption 100% of the English- and French-language programs in its inventory, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007, with the exception of original licensee-produced community programming and access programming.
- (b) The licensee shall caption 100% of original licensee-produced community programming by the end of the licence term.
13. The licensee shall adhere to the quality standards on closed captioning developed by the television industry’s working groups, as amended from time to time and approved by the Commission.

14. The licensee shall have a monitoring system in place to ensure that for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. "Original form" means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
15. The licensee shall adhere to the *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
16. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
17. The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
18. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of the inventory available on each server. The list must identify each program by programming category and by country of origin and indicate the period of time that each program was on the server and available to subscribers.
19. (a) Except as otherwise provided in subsections (b) and (c) or under a condition of its licence, if a licensee elects to offer an outlet for local expression, the licensee shall offer the programming at no charge to its subscribers and shall not offer any programming service other than the following:
 - i. community programming;
 - ii. a maximum of two minutes during a 60-minute interval of announcements promoting broadcasting services that the licensee is authorized to provide;
 - iii. a public service announcement;
 - iv. an information program funded by and produced for a federal, provincial or municipal government or agency or a public service organization;
 - v. the question period of the legislature of the province in which the licensed area is located;

- vi. an announcement providing information about the programming that is to be offered as local expression;
- vii. a commercial message that mentions or displays the name of a person who sponsored a community event or the goods, services or activities sold or promoted by the person, if the mention or display is in the course and incidental to the production of community programming relating to the event;
- viii. an oral or written acknowledgement, which may include a moving visual presentation of no more than 15 seconds per message, contained in community programming that mentions no more than the name of a person, a description of the goods, services or activities that are being sold or promoted by the person and their address and telephone number, if the person provided direct financial assistance for the community programming in which the acknowledgement is contained;
- ix. an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person, the goods or services provided by the person and their address and telephone number, if the person provided the goods or services free of charge to the licensee for use in connection with the production of the community programming in which the acknowledgement is contained;
- x. a still image programming service as described in Public Notice CRTC 1993-51, dated April 30, 1993 and entitled *Exemption order respecting still image programming service undertakings*, if the service is produced by the licensee or by members of the community served by the licensee and does not contain commercial messages, other than commercial messages that are contained within the programming service of a licensed radio station; and
- xi. the programming of a community programming undertaking.

(b) At least 75% of the time for promotional announcements included in programming offered as local expression under subparagraph (a)(ii) shall be made available for the promotion of the outlet for local expression and for the promotion, by Canadian programming undertakings other than related programming undertakings, of their respective services.

(c) A maximum of 25% of the time for promotional announcements included in programming offered as local expression under subparagraph (a)(ii) may be made available for the promotion of the services of related programming undertakings, discretionary services, packages of programming services, FM services and additional outlets and for the distribution of information on customer services and channel realignments.

(d) Whenever a licensee is not offering community programming on the outlet for local expression or is offering as part of its inventory community programming that

has no audio component, the licensee may offer as part of its inventory the programming service of a local radio station, other than an educational radio programming service whose operation is the responsibility of an educational authority.

(e) If a licensee provides time on the outlet for local expression during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis among all accredited political parties and rival candidates.

20. (a) Except as otherwise provided under a condition of its licence, a licensee shall devote to local community television programming not less than 60% of the programming offered as local expression.

(b) Except as otherwise provided under a condition of its licence, a licensee

I. shall devote at least the following percentages of the programming offered as local expression to community access television programming:

- i. 35% for the broadcast year beginning on 1 September 2011 and ending on 31 August 2012;
- ii. 40% for the broadcast year beginning on 1 September 2012 and ending on 31 August 2013;
- iii. 45% for the broadcast year beginning on 1 September 2013 and ending on 31 August 2014; and
- iv. 50% for the broadcast year beginning on 1 September 2014 and each subsequent broadcast year.

II. shall, on or before August 31, 2014, devote a further percentage up to a total of 50% of the programming offered as local expression to community access television programming, according to requests;

III. shall, if one or more community television corporations are in operation in a licensed area, make available to them up to 20% of the programming offered as local expression for community access television programming; and

IV. shall, if one or more community television corporations are in operation in a licensed area, make available to each of them, on request, not less than four hours of community access television programming.

(c) The time allocated to the distribution of alphanumeric message services is excluded from the calculation of the programming requirement under this condition.

21. (a) Except as otherwise provided under a condition of its licence, the licensee shall

- I. keep a program log or a machine-readable record of programs offered as local expression in the licensed area and retain it for a period of one year after the latest date on which the program is offered; and
- II. enter into the program log or machine-readable record of programs the following information for each program:
 - i. the title of the program;
 - ii. the duration of time the program was offered, including the announcements and commercial messages referred to in conditions of licence 19(a)(ii) and (vii);
 - iii. a brief description of the program, including a statement as to whether it is local community television programming;
 - iv. the name of the distribution undertaking for which the program was produced and the name of the producer;
 - v. a statement as to whether the program constitutes community access television programming and identifying the party that has been provided with access; and
 - vi. the time of commencement of the announcements and commercial messages referred to in conditions of licence 19(a)(ii) and (vii), the duration and in the case of each commercial message, the name of the person selling or promoting goods, services or activities.

(b) The licensee shall retain a clear and intelligible audiovisual recording of each program offered as local expression in the licensed area for a period of

- I. four weeks after the latest date on which the program is offered; or
- II. eight weeks after the latest date on which the program is offered if the Commission receives a complaint from a person regarding the program or, for any other reason, decides to investigate and so notifies the licensee before the end of the period referred to in paragraph (I).

22. As part of its annual return on 30 November of each year, the licensee shall file aggregate statistical data for the previous broadcast year ending 31 August concerning the following:

- video server capacity – current;
- video server capacity – projected for the end of the next broadcast year;

- total number of titles on the servers;
 - total number of Canadian titles on the servers;
 - total number of feature films on the servers;
 - total number of Canadian feature films on the servers;
 - breakdown of titles in both official languages;
 - total number of orders of Canadian programs;
 - total number of orders of non-Canadian programs;
 - total number of orders of Canadian feature films;
 - total number of orders of non-Canadian feature films; and
 - the amount of revenue remitted to Canadian feature film rights holders.
23. The licensee is authorized to make available for distribution both a standard definition and a high definition version of its service, provided that no less than 95% of the video and audio components of the high definition and standard definition versions of the service are the same, exclusive of commercial messages and any part of the service carried on a subsidiary signal. Further, all of the programming making up the 5% allowance shall be provided in high definition.

Expectations

- 1 The Commission expects the licensee to make its program offering available to the maximum extent possible in both official languages.
- 2 If captions are available, the Commission expects the licensee to provide viewers with a captioned version of all advertising, sponsorship messages and promos offered in its programming.
- 3 The Commission expects the licensee to ensure that 100% of original access programming is captioned by the end of the licence term.
- 4 The Commission expects the licensee to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of persons with a visual impairment, as set out in *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.

- 5 The Commission expects the licensee to:
 - display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and
 - make information available regarding the described programs that it will broadcast.

- 6 The Commission expects the licensee to provide an audio description of all programming that provides textual or graphic information, including programming broadcast on the barker channel.

- 7 If the licensee broadcasts adult programming, the Commission expects the licensee to provide its proposed internal policy on adult programming at least one month prior to the implementation of the service, as required by the Commission in *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.

- 8 Where applicable, the Commission expects the licensee to adhere to its internal policy on adult programming once reviewed and approved by the Commission.

- 9 The Commission expects the licensee to endeavour through its programming and employment opportunities to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

- 10 In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992 (Public Notice 1992-59):
 - if the licensee has 100 or more employees, it is subject to the *Employment Equity Act*.
 - if the licensee has between 25 and 99 employees, the Commission expects the licensee to have in place an employment equity plan that addresses the equitable representation of the four designated groups (women, Aboriginal peoples, persons with disabilities and visible minorities), as set out in Public Notice 1992-59 and in *Amendments to the Commission's Employment Equity Policy*, Public Notice CRTC 1997-34, 2 April 1997. As part of the implementation of this employment equity plan, the Commission further expects the licensee to:

- ensure that the details of the licensee's employment equity policies are communicated to managers and staff;
- assign a senior level person to be responsible for tracking progress and monitoring results; and
- dedicate financial resources to the promotion of employment equity in the workplace.

Encouragement

The Commission encourages video-on-demand undertakings to share aggregate information on viewing of video-on-demand programs with broadcasters if such information is available.